



***Town of Tyngsborough***  
***Planning Board***  
25 Bryants Lane,  
Tyngsborough, Massachusetts 01879-1003  
Office: (978) 649-2300 ext. 115

MINUTES  
May 17, 2012

**APPROVED**

Attachments:

1. Meeting Agenda
2. 431 Middlesex Rd. Engineering Review by David E. Ross Associates – 5/15/12
3. Town Dept. Comments for 431 Middlesex Rd. – May 2012

Members Present: Steve Nocco  
Caryn DeCarteret  
William Gramer  
Tom Delmore  
Steve O'Neill  
Jesse Johnson, David E. Ross Associates

**7:00pm -** Meeting called to order by Chairman Steve Nocco

**Planning Board Reorganization**

**C. DeCarteret:** Motion for Tom Delmore to assume the role of Chairman.

**S. O'Neill:** 2<sup>nd</sup> the motion

**In Favor: 4 Opposed: 0 Abstain: 1**

**Passes: 4-0-1**

**C. DeCarteret:** Motion for William Gramer to assume the role of Vice Chairman

**S. O'Neill:** 2<sup>nd</sup> the motion

**In Favor: 4 Opposed: 0 Abstain: 1**

**Passes: 4-0-1**

**T. Delmore:** Motion for Caryn DeCarteret to assume the role of Clerk

**S. O'Neill:** 2<sup>nd</sup> the motion

**In Favor: 4 Opposed: 0 Abstain: 1**

**Passes: 4-0-1**

**7:10pm**      **431 Middlesex Road (a.k.a. Smoky Bones Restaurant) - Special Permit**  
Amendment application to permit the construction of a ~2,400 s.f. addition.

**C. DeCarteret:** Motion to waive the reading of the legal notice and abutter list.

**S. O'Neill:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

Attorney Peter Nicosia appeared before the Board for the applicant concerning the above special permit application. Atty. Nicosia explained that the applicant, Smokey Bones Bar & Grill is looking to expand its dining area by adding a 1,290 square foot enclosed patio addition that opens onto another 470 square foot outdoor patio addition. Atty. Nicosia explained that set-back variances were required and obtained from the ZBA. In addition, the applicant has secured a letter of support for the project by the abutting business Simons Car Care Service Center. He went on to say that the additional parking requirements would be fulfilled by the restaurant's right to use the Pheasant Lane Mall parking area that abuts the restaurant.

Landscape architect, Kim Turner explained the proposed buffering and screening remedies, and the addition of a retaining wall between the Simon Service Center and Smokey Bones. In addition, there would be a green screen trellis system attached to the retaining wall that would be home to the screening vegetation.

Planning Board engineer J. Johnson worked closely with the design engineers to ensure that all of the Board's requirements would be met. J. Johnson reported that the plans were well thought out and would work well. T. Delmore was concerned with the parking, and felt that additional signage that directed patrons to the additional parking at the mall would be beneficial to the overall traffic flow of the site. In addition, the Board felt that restaurant management should be extra vigilant in ensuring that restaurant patrons follow all parking lot directions.

Town departments did submit comment forms, but there were no concerns with this project. Finally, there were no residents in attendance to speak on this project.

**T. Delmore:** Motion to close the public portion of the hearing

**S. O'Neill:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

**W. Gramer:** Motion to approve the Special Permit amendment for 431 Middlesex Road, dba, Smokey Bones Bar and Grill to construct a 1,290 square foot patio and a 470 square foot outdoor patio addition to the existing restaurant

REASONS FOR APPROVAL OR CONDITIONS OF APPROVAL

The following **Mandatory Conditions** apply to this decision:

1. Approval is required prior to any deviation from the approved plan. Any and all deviations shall be submitted to the Planning Board in writing at a regularly scheduled meeting for consideration of approval.

In accordance with Section 1.16.14 of the Zoning By-Law the Planning Board finds that this proposed use:

1. Is in harmony with the purpose and intent of this By-Law.
2. Will not be detrimental or injurious to the neighborhood in which it is to take place.
3. Is appropriate for the site in question.
4. Complies with all applicable requirements of this By-Law.
5. The Board's Decision is as follows:

Property Address: 431 Middlesex Road  
Map 11, Parcel 21, Lot 0 (the "Property")  
Applicant: Smokey Bones Bar & Fire Grill (the "Applicant")

The Town of Tyngsborough Planning Board (the "Board") hereby certifies that the following is a detailed record of its proceedings relative to the application of Smokey Bones Bar & Fire Grill (the "Applicant") for an amendment to the Special Permit and Site Plan Special Permit under Section 1.16.00 et. seq. and 2.16.00 of the Town of Tyngsborough Zoning Bylaws (the "Bylaws") to construct a 1,290 square foot enclosed patio and a 470 square foot outdoor patio addition off at 431 Middlesex Road, in Tyngsborough, Middlesex County, Massachusetts.

**Subject Property:** Tyngsborough Assessors Map 11, Parcel 21, Lot 0 (the "Property")

**I. PROCEDURAL HISTORY:**

1. Smokey Bones Bar and Fire Grill (Applicant) applied for a Modification to an existing Special Permit-Major Business Complex (originally granted 4/28/94) pursuant to 4.10.00 of the Tyngsborough Zoning By-Laws for purposes of constructing a new 1,290 square foot enclosed patio and a 470 square foot outdoor patio addition to the existing Smokey Bones Restaurant.
2. Major Business Complex Site, Architectural, Existing Conditions, Plot Plan, Demolition & Removal Plan, Site Plan, Standard Details, Landscaping Plan, Project Info and Site Plan, Hydrology Calculations and Elevations along with other submissions on public file were submitted in connection with the Special Permit Application package. The Tyngsborough Planning Board also received departmental comments and peer review consulting in connection with the application review.
3. The legal notice was published in the Lowell Sun on May 9 & 16, 2012.
4. A Public hearing was held on the Special Permit Application before the Tyngsborough Planning Board on May 17, 2012.
5. At the public hearings, the applicant and its attorneys and engineers made presentations of the project. Citizens in attendance were able to speak for or against the Special Permit application. Members of the Tyngsborough Planning Board and its consultants were able to ask questions and comment on the Special Permit Application.

**II. FINDINGS:**

The Tyngsborough Planning Board finds as follows with regards to the Special Permit Application:

1. The Applicants have fully complied with the submittal requirements in Sections 1.16.14, 1.16.20, 1.16.22, 4.10.20 and 4.10.21 of the Tyngsborough Zoning By-Laws as well as the Planning Board's own Rules and Regulations.
2. The proposed plan and application submittals are in compliance with Tyngsborough Zoning By-Laws Sections 4.10.30(2) & (3) or variances granted there from.

3. The proposed plan and application submittals are in harmony with the purpose and intent of the By-Laws; will not be detrimental or injurious to the neighborhood in which it is to take place; is appropriate for the site in question and complies with the applicable requirements of Tyngsborough Zoning By-Law 1.16.14.
4. The Applicants have obtained the required Variances from the Zoning Board of Appeals pursuant to Sections 2.12.50 (side yard set-back), 3.13.32 (buffering & screening) and, 3.10.24 (parking) of the Tyngsborough Zoning By-Laws.
5. Pursuant to Section 1.16.16 the Applicant shall have two (2) years to complete the project.

### **III. SPECIAL CONDITIONS:**

1. Appropriate signs shall be placed within the parking lot to alert patrons to properly park only in designated areas.
2. Prior to occupancy, the Planning Board's engineer shall perform a final inspection and approve the modifications being in conformance with the approval design plans.

**S. O'Neill:** 2<sup>nd</sup> the motion

**Roll Call Vote:**

**W. Gramer:** In Favor

**T. Delmore:** In Favor

**S. Nocco:** In Favor

**S. O'Neill:** In Favor

**C. DeCarteret:** In Favor

**Passes:** 5-0

### **8:10pm      DISCUSSION**

#### **422 Middlesex Rd. – Jeff Brem**

Jeff Brem of Meisner Brem Corporation appeared before the Board with a quick explanation of the project he has been working on for his client Mark Greenbaum. There are approximately 48 acres of land behind the Olive Garden restaurant on Middlesex Rd. that Mr. Greenbaum is proposing to develop. There is a large wetland system that would need to be crossed in order to access the ~24 acres of buildable upland on the site. The site is zoned industrial and the proposal would be for an industrial office building.

Mr. Brem explained that the process has been on-going for a couple of years with Tyngsborough Conservation Commission, DEP, and the Army Corp of Engineers (ACOE). Due to the extensive wetland crossing and replication required, ACOE had many concerns and requirements that needed to be addressed. Mr. Brem went on to say that they are in the final phases of design and wanted to run the project by the Planning Board for their thoughts. The general consensus from the Board was positive, as they felt that an office building would be a good fit for that site given the access limitations, and zoning requirements.

### **Sleepy Hollow Bond Reduction**

Developer Walter Eriksen explained that he has a preliminary as-built plan that was reviewed by Board engineer J. Johnson. The plans do need some additions and revisions and Mr. Eriksen was looking for a partial release of the bond. J. Johnson reported that the remaining bond totals \$23,062 and that \$15,000 should be held back in order for the street acceptance process to be completed. Therefore, he would recommend a partial release of \$8,062.

**T. Delmore:** Motion to release \$8,062 from the bond for Sleepy Hollow leaving the bond balance at \$15,000.

**C. DeCarteret:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

### **Tyngsborough Commons**

Developer Walter Eriksen appeared before the Board with a progress report for this project. Mr. Eriksen said that the MEPA application is slated to be submitted on May 30, 2012 with a decision expected in July.

Mr. Eriksen informed the Board that due to the enormity of the project it was necessary to take on another partner. A market analysis was done on the project as it was originally designed (condominium units located over retail shops). The analysis yielded results that indicated the design would not be very marketable. Because new lending requirements (specifically 2010 FHA amendments) are such that not more than 25% of the 4 structure can be occupied by a non-owner, and thus buyers of the condominium units would have difficulty obtaining financing given that the retail shops below would be leased. Thus, as is the case in a similar project in Bedford, the retail shops could end up as a dark space or condominium units unsold. The project partners are now contemplating a re-design of the buildings. Mr. Eriksen went on to say that their initial thoughts were to change the buildings to be all apartments and to add a club house and pool, and to move and add the retail space over to the other buildings closer to the complex entrance, essentially an exchange of the space without an overall reduction in retail vs.

residential space. Right now, Mr. Eriksen wanted to gain some Board feedback in order for him to work with his partners on a project re-design.

S. O'Neill was concerned with the proposed change since the project itself was marketed a certain way to the Town and it was that original design that the Board supported. The Board members commented that the original appeal was the open nature of the complex inviting all visitors to the retail shops in the back of the complex below the condominium units, and that changing the back buildings to all apartments, with a pool and clubhouse, would cut off that portion of the complex from the public and we would essentially be creating an apartment complex and not the mixed use design as had been proposed and approved. The town center feel with sidewalks and benches for the public visiting the retail shops would be gone. T. Delmore also expressed concern over the impact on the school system with rental apartments since the original project contemplated sales of condominium units to young professionals and empty-nesters, but also felt that having vacant buildings was more undesirable and that we either have a project that moves forward or we have no project at all and we need to try to work on a design that makes sense.

Mr. Eriksen will continue to evaluate the project and work on an alternative designs to bring to the Board at a future meeting.

#### **ENGINEER REPORTS - None**

#### **ADMINISTRATIVE**

The Board did not vote on the April 5, 2012 minutes tonight.

**W. Gramer:** Motion to approve the minutes of April 19, 2012 as written.

**C. DeCarteret:** 2<sup>nd</sup> the motion

**In Favor: 3 Opposed: 0 Absent: 2**

**Passes: 3-0-2**

**8:30pm**

**C. DeCarteret:** Motion to adjourn

**W. Gramer:** 2<sup>nd</sup> the motion

**In Favor: 3 Opposed: 0 Absent: 2**

**Passes: 3-0-2**

Minutes respectfully submitted by  
William Gramer, Planning Board Clerk